

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DARLENE L. SWISHER,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

CASE NO. 1:09 CV 939

JUDGE DONALD C. NUGENT

ORDER ADOPTING  
REPORT AND RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. The Report and Recommendation (ECF #15) is hereby ADOPTED. Petitioner sought judicial review of the Social Security Administration's final decision denying her applications for Disability Insurance benefits under Title II of the Social Security Act, and Supplemental Social Security Income benefits under Title XVI of the Social Security Act. Magistrate Judge McHargh found that the ALJ's decision was supported by substantial evidence and that the ALJ applied the appropriate legal standards. Ms. Swisher timely filed her objections to the Magistrate's Report and Recommendation, and the Defendant filed a Response to Plaintiff's Objections. (ECF #16, 17).

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objection has been made. *See* FED. R. CIV. P. 72(b). The Court

finds that Petitioner's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate's Report and Recommendation. Ms. Swisher did not provide sufficient medical evidence of her claimed disability, and the ALJ appropriately found that her testimony was not sufficiently credible to overcome the lack of medical evidence with regard to her pain level and alleged need for physical restrictions. *See Duncan v. Sec'y of Health & Human Servs.*, 801 F.2d 847, 853 (6<sup>th</sup> Cir. 1986); *Felisky v. Bowen*, 35 F.3d 1027, 1036 (6<sup>th</sup> Cir. 1994). Ms. Swisher bore the burden of showing that her impairments meet or equal a listed impairment, and she failed to meet this burden. *See Jones v. Comm'r of Soc. Sec.*, 336 F.3d 469, 474 (6<sup>th</sup> Cir. 2003). Further, the medical evidence presented from Ms. Swisher's own treating physician, Dr. Shenk, was consistent with the conclusion that her impairment did not rise to the level of a disability, and his opinion is entitled to more weight than the opinion testimony of agency physicians who never examined, or had no on-going relationship with Ms. Swisher. 20 C.F.R. § 404.1527(d)(2); 20 C.F.R. § 404.1502; (Tr. 16, 18, 213-34, 251, 254-60; Doc. 13, at 6,7).

The Court finds Magistrate Judge McHargh's Report and Recommendation to be thorough, well-written, well-supported, and correct on this and all other issues addressed therein. The Magistrate's Report and Recommendation fully and correctly addresses all of the Plaintiff's claims and the Plaintiff's objections are not persuasive. This Court, therefore, adopts the Magistrate's Report in its entirety. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). The Social Security Administration's final decision holding that Ms. Swisher is not

disabled and denying Supplemental Security Income and Disability Insurance Benefits is affirmed. IT IS SO ORDERED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: June 29, 2010